"If goods be put on board in a damaged condition and are in consequence liable to effervesce and generate the fire by which they are consumed, the underwriters are not liable." In our law seaworthiness is made to depend upon a warranty, so that, if a vessel is unseaworthy, as, for example, from not having a sufficient crew on board, and she is lost by reason of some cause not connected with that unseaworthiness, it will be sufficient for the underwriter, in repudiating his liability, to prove that she was unseaworthy. Unless you are to invent a new implied warranty with respect to goods, and say that, where goods are insured and the premium paid, and the goods destroyed by the perils insured against, the insurers are not liable by reason of some unseaworthiness in the goods, this plea is bad. I never can consent to introduce a novelty likely so seriously to affect the mercantile law of the country.

BYLES, J.—I concur in saying that where goods perish by their own vice they are not destroyed by perils of the sea insured against. The proper mode of taking advantage of such a ground of defence is, by pleading in the ordinary way, that the goods were not lost by the perils insured against. It was said by Mr. *Watkin Williams* that there was a warranty that the goods were seaworthy, but that is not so. This very case is provided for in the Code de Commerce, and unseaworthiness is said not to be within the perils insured against; but it is not said that freedom from such a defect is a condition precedent to the liability of the underwriter attaching.

KEATING, J., concurred. Judgment for the plaintiff.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

Municipal Bonds.—Where a county issues its bonds payable to bearer, and pledging the faith, credit, and property of the county, under the authority of an Act of Assembly, referred to on the face of the bonds by date, for their payment, and those bonds pass, *bonâ fide*, into the hands of holders for value, the county is bound to pay them. It is no defence to the claim of such a holder that the Act of Assembly, referred to on the face of the bonds, authorized the county to issue the bonds only and subject to certain "restrictions, limitations, and conditions," which have not been formally complied with; nor that the bonds were

[1] From J. W. Wallace, Esq., Reporter; to appear in Vol. I. of his Reports.

sold at less than par, when the act authorizing their issue, and referred to by date on the face of the instrument, declared that they should, "in no case," nor "under any pretence," be so sold: *Mercer County* vs. *Hacket; Gelpcke* vs. *City of Dubuque; Meyer* vs. *City of Muscatine; Van Hostrup* vs. *Madison City.*

Municipal Corporation.—An authority to a city corporation to take stock in any chartered company for making "a road or *roads to* said city," authorizes taking stock in a road between other cities or towns, from the nearest of which to the city subscribing there is a direct road; the road in which the stock is taken being in fact a road in extension and prolongation of one leading into the city: *Van Hostrup* vs. *Madison City.*

Negotiable Instruments.—Corporation bonds payable to bearer, though under seal, have, in this day, the qualities of negotiable instruments. And a party recovering on the coupons will be entitled to the amount of them, with interest and exchange at the place where, by their terms, they were made payable: *Mercer County* vs. *Hacket; Gelpcke* vs. *City of Dubuque; Meyer* vs. *City of Muscatine.*

The indorsement of negotiable paper with the words "*for collection,*" restrains its negotiability; and a party who has thus indorsed it, is competent to prove that he was not the owner of it, and did not mean to give title to it or to its proceeds when collected: *Sweeny* vs. *Easter.*

Where a banker, having mutual dealings with another banker, is in the habit of transmitting to him in the usual course of business negotiable paper for collection, the collection being in fact sometimes on account of the transmitting banker himself, and sometimes on account of his customers, and fails, owing his corresponding banker a balance in general account,—

I. Such corresponding banker cannot retain to answer that balance any paper so transmitted for collection, and really belonging to third persons, if he knew it was sent for collection merely; and as respects the knowledge of or notice to the receiving banker, it is unimportant from what source he may have derived it.

II. Neither can he retain it, if he did not know that it was so sent, unless he have given credit to the transmitting banker, or have suffered a balance to remain in his hands, to be met by the paper transmitted or expected to be transmitted in the usual course of dealings between them.

III. But if the receiving banker have treated the transmitting banker as owner of the transmitted paper, and had no notice to the contrary, and, upon the credit of such remittances made or anticipated in the usual course of dealing between them, balances were from time to time suffered to remain in the hands of the transmitting and now failed banker, to be met by proceeds of such negotiable paper transmitted, then the receiving banker is entitled to retain the paper or its proceeds against the banker sending it, for the balance of account due him, the receiving banker aforesaid: *Id.*

Patent.—Patents for inventions are not to be treated as mere monopolies, and therefore as odious in the law, but are to receive a liberal construction, and under a fair application of the rule that they be construed

ut res magis valeat quam pereat. Hence, where the "claim" immediately follows the description, it may be construed in connection with the explanations contained in the specification; and be restricted accordingly: *Turrill* vs. *Railroad Co.*

Where a patent is for a combination of distinct and designated parts, it is not infringed by a combination which varies from that patented, in the omission of one of the operative parts and the substitution therefor of another part substantially different in its construction and operation, but serving the same purpose: *Eames* vs. *Godfrey.*

In cases where an invention for which a patent is sought comes within the category of a machine, the patent must be for *it*, and not for its "mode of operation," nor for its "principle," nor for its "idea," nor for any "abstraction" whatsoever: *Burr* vs. *Duryee.*

Warranty.—In an action for a false warranty, whether the action be in assumpsit or in tort, a *scienter* need not be averred; and if averred, need not be proved: *Schuchardt* vs. *Allens.*

Usury.—Where the rate of interest is fixed by law at so much *per annum*, a contract may lawfully be made for the payment of that rate before the principal comes due, at periods shorter than a year; even although the effect of this may be, by allowing the party to reinvest and so compound his interest, to get more than the rate fixed: *Meyer* vs. *City of Muscatine.*

A person contracting for the payment of interest may contract to pay it either at the rate of the "place of contract," or at that of the "place of performance," as one or the other may be agreed on by himself and the creditor; and the fact that the rate of the place at which it is agreed that it shall be paid is higher than the rate in the other place, will not expose the transaction to the imputation of usury, unless the place agreed on was fixed *for the purpose* of obtaining the higher rate, and *to evade* the penalty of a usurious contract at the other place: *Miller* vs. *Tiffany.*

Where the promise to pay a sum above legal interest depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious. Nor will usurious interest be inferred from a paper which, while referring to payment of a sum above the legal interest, is "uncertain and so curious," that intentional bad device cannot be affirmed: *Spain* vs. *Hamilton's Administrator.*

SUPREME COURT OF MASSACHUSETTS.[1]

Mortgage of Personal Property for future Indebtedness—Intervening Judgment.—A mortgage of personal property, given to secure such sums as may thereafter become due to the mortgagee, is not a valid security, as against a judgment-creditor of the mortgagor, for claims accruing after the property was attached in his suit, and the mortgagee summoned as trustee: *Barnard* vs. *Moore.*

Bequest of Sum, less Debts due to Testator—Notes of Legatee—Mar-

[1] From Charles Allen, Esq., Reporter; to appear in Vol. VIII. of his Reports.

ried Woman.—If a testator by his will, executed in his last sickness, creates a fund, and directs the trustees thereof to pay over to each of his children a certain sum, but provides, that "any legal debt due from either of said children to my estate at the time of my decease, shall first be deducted by said trustees, and the balance only be paid over to such child as aforesaid;" a married daughter is entitled to receive the whole sum so directed to be paid, without deduction, although she had signed notes with her husband to her father for moneys furnished to her husband by her father, which the latter held at the time of the execution of the will, and of his death, and upon which he had collected interest in his lifetime, and which he included in a memorandum of his assets, and although for sums advanced by him to her, and to others of his children, he had taken no notes and made no charge, and no debts were due to him from any of his children, unless these notes and a similar one executed by another married daughter and her husband, are to be regarded as such: *Rogers* vs. *Daniell.*

Nuisance—Prohibition of Offensive Trade by Selectmen—Notice.—Under Gen. Sts. c. 26, § 52, the selectmen of a town, acting as a board of health, may by a general order forbid the exercise of an offensive trade or employment therein, without first giving notice to those who at the time are engaged in carrying on the same: *Belcher* vs. *Farrar.*

Private Way—Right of Public to travel over.—If a private way is opened, leading from a public street, and prepared for use in the same manner as a public street, and with nothing to show that it is not such, the public may lawfully travel over it, and in so doing they are bound only to the same degree of care, in respect to others who are also lawfully using it, as in travelling over public streets: *Danforth* vs. *Durell.*

Street Railway Company—Not taxable for Horses, &c., used by it.—An incorporate street railroad company is not taxable for horses or other personal property used in and necessary for the prosecution of its business: *Middlesex Railroad Company* vs. *Charlestown.*

Railroad—Accidental Injury—Mutual Negligence.—Crossing a railroad track without looking to see if a train is coming is not conclusive proof of a want of care; and if it appears that there is a double track, and a person has just bought a ticket at a station for a train, which is to pass upon the further track, and the station agent says to him: "The train is coming; we will cross over;" and he attempts to follow the agent, upon the premises of the railroad company, to take his place in the train, which meanwhile has arrived, and, in crossing over the nearer track for that purpose, is struck by a train coming from the other direction, and partially behind him, which he did not look for or see until too late to save himself, it is proper to submit it as a question of fact for the jury to determine whether he was careless. And while so going from the ticket office to take his seat in the cars, he is to be considered as a passenger, and is entitled to the rights of a passenger; and it is the duty of the railroad company to use the utmost care and diligence in providing for him a safe and convenient way and manner of access to the train, and in preventing the interposition of any obstacle which would unreasonably impede him or expose him to harm while proceeding to take his seat in the cars, in order to prevent those injuries which

human care and foresight can guard against: *Warren* vs. *Fitchburg Railroad Co.*

Decree in Equity by Supreme Court U. S.—Subsequent Suit for same Matter.—A final decree of the Supreme Court of the United States, dismissing a bill in equity after a hearing, is a bar to a subsequent suit in equity in this court for the same cause, between the same parties, although the record shows that such decree was passed by a divided court: *Durant* vs. *Essex Co.*

Writ of Entry—Judgment—Want of Means to ascertain the Lands described in the Verdict.—After a verdict for the demandant in a writ of entry, for a described portion of the demanded premises, and judgment thereon, a writ of error to reverse the judgment will not be sustained on the ground that there are no sufficient monuments or other means to enable the parties accurately to ascertain the land described in the verdict: *Silloway* vs. *Hale.*

Way—Right appurtenant to Land granted though Access otherwise is not impossible.—A way over other land of the grantor in a deed may pass as appurtenant to the land granted, although there are no insuperable physical obstacles to prevent access by another way, if such other way cannot be made without unreasonable labor and expense; and, in determining this question, a jury may consider the comparative value of the land and the probable cost of such a way: *Pettingill* vs. *Porter and others.*

Trespass—Concealment from Owner—Statute of Limitations.—The omission to disclose a trespass upon real estate to the owner, if there is no fiduciary relation between the parties, and the owner has the means of discovering the facts and nothing has been done to prevent him from discovering them, is not such a fraudulent concealment of the cause of action as will prevent the operation of the statute of limitations, under Gen. Sts. c. 155, § 12: *Nudd* vs. *Hamblin.*

Promissory Note—Notice of Non-payment—Waiver of Notice—Collateral Security.—Indorsers of a promissory note do not waive notice of its non-payment by taking from the maker a mortgage of all his property, with a general condition to save them harmless from all contracts entered into by them from him, and by selling the property under a power of sale contained in the mortgage, for breach of condition: *Haskell* vs. *Boardman and another.*

Mortgage—Rights of Mortgagee who has been fraudulently induced to give up the Possession of the Mortgage.—If a mortgage of real estate has not been discharged, but the mortgagor has obtained possession of the same with the note which it was given to secure by fraudulently inducing the mortgagee to accept in payment of the note other securities which are worthless, the latter may maintain an action to foreclose the mortgage against one who has purchased a title to the premises of the mortgagor in ignorance of the transaction between him and the mortgagee; although such purchaser has paid money to discharge a new mortgage upon the premises executed by the mortgagor to one who took the same relying in good faith upon the fraudulent payment to the original mortgagee: *Grimes* vs. *Kimball.*

Mortgage of Personal Property—Adjournment of Sale.—In the execution of a power of sale in a mortgage of personal property, the mortgagee has a right, in the exercise of a reasonable discretion, to adjourn the sale from time to time, without doing so through the agency of a licensed auctioneer or giving any new notice to the mortgagor: *Hosmer* vs. *Sargent.*

Mortgage—Suit to foreclose—Reduction of Judgment by Penalty for Usury.—In a suit to foreclose a mortgage, the mortgagor is entitled to the benefit of the statute penalty for usury in reduction of the sum for which conditional judgment is entered. No deduction, however, is to be made for usury paid under a verbal agreement, which is not incorporated into the written contract: *Minot* vs. *Sawyer.*

Negligence—Defective Way—Evidence as to Character of Plaintiff's Horse.—If, in an action to recover for an injury sustained by reason of a defective way, it becomes a material question whether the plaintiff's horse had a habit of shying at the time of the accident, the defendants, after introducing evidence of instances of his shying before that time, may also prove similar instances afterwards: *Todd* vs. *Inhabitants of Rowley.*

Negligence—Action against Municipal Corporation for Failure to keep Sewer in Repair.—No action lies against a city for a failure to keep a public sewer and cesspool in repair, whereby waste water accumulates and flows into the cellar of a neighboring house, which is not connected by a drain with the public sewer: *Barry* vs. *Lowell.*

Municipal Corporation—Liability for Money borrowed by Treasurer and Converted to his own Use.—If the inhabitants of a town have authorized their treasurer to borrow a certain sum of money for a specific purpose, and to give his note as treasurer therefor, and he has exercised this authority, they are not liable upon a note given by him in their name for money subsequently borrowed by him and converted to his own use, although he assumed to be acting under the authority conferred upon him, and the lender supposed that he was doing so: *Lowell Savings Bank* vs. *Winchester.*

Execution—Attachment on Goods of Separate Owners which have been Mingled.—If two separate owners mingle their goods together, it is the duty of an officer who wishes to make an attachment upon a writ against one of them to ascertain, if he can, what portion of the goods belongs to each; and not to attach the whole of them without making the inquiry: *Carlton* vs. *Davis.*

SUPREME COURT OF MISSOURI.[1]

Landlords and Tenants—Covenant for Renewal.—A covenant by the landlord to renew the lease for a second term, does not give the tenant a right at law to retain possession of the premises demised after the ex-

[1] From Charles C. Whittesey, Esq., Reporter; to appear in Vol. 34th of Missouri Reports.

piration of the original term. If the landlord refuse to comply with this covenant, the tenant has a remedy in equity, or in an action upon the covenants: *Finney* vs. *Cist.*

Agency—Power—Partnership—Assignment.—A power of attorney from one partner to his copartner, giving him authority to manage his individual business, and also to superintend the partnership business, to make such purchases as is usual to keep up the stock, and to renew notes in bank, will not authorize such copartner to make a general assignment of the partnership property for the benefit of creditors: *Hook* vs. *Stone.*

Equity—Life Estate—Remainderman.—When the owner of the life estate in personal property so deals with it as to endanger the estate of those in remainder, a court of equity will require the owner of such life estate to give security against loss to those in remainder: *Lewey* vs *Lewey.*

Abstract of Title—Contract—Damages.—Where one party undertakes for a valuable consideration to furnish another with an abstract of title, or statement of the conveyances and encumbrances affecting a tract of land, and incorrectly reports the quantity of land previously conveyed, he will be liable to respond in damages to the party who, relying upon such information, purchases the land: *Clark* vs. *Marshall et al.*

Attachment—Garnishee—Fraudulent Conveyance.—A deed of trust made by a debtor conveying a stock in trade to secure notes not due, and reserving to the grantors the right to remain in possession, with the right of using and selling the property until the happening of some one of the contingencies, without accountability to any one for the proceeds of sales made in the meantime, is a conveyance for the use of the grantor, and is fraudulent and void as against attaching creditors; and although the trustee may have taken possession of the goods, he will be held liable as garnishee to the attaching creditor for the property in his hands. (BATES, C. J., dissenting.) *Armstrong* vs. *Tuttle.*

Accord—Evidence.—Where two partners have, under the advice of a friend, come to a settlement of their partnership accounts, evidence that the friend was mistaken as to some of the facts is immaterial, it not appearing that the partners themselves were mistaken as to any fact at the time of the settlement: *Thompson* vs. *Bennett's Adm'r.*

Crime—Insanity—Burden of Proof.—It is a presumption of law that the party indicted for a crime is sane, and the burden of proof is upon the defendant to show that he was insane at the time of the commission of the crime charged: *State of Missouri* vs. *McCoy.*

State—County—City of St. Louis—Constitution—Revenue.—The money acquired by a county from the taxation of its citizens is not the private property of the county, and an act of the General Assembly directing the county to appropriate part of its funds to pay a portion of the police expenses of a city situated within its limits, is not an application of property to private uses, and is not the taking of private pro-

perty to public uses without compensation, the police commissioners being an agency of the State government and performing public duties: *State* vs. *County Court of St. Louis County.*

State—County—Constitution.—1. An act directing the county to appropriate part of its revenue, already collected, in a particular way, is not unconstitutional, as being retrospective in its operation. It takes away no vested right, nor does it impair the obligation of contracts. The acts of the Legislature, providing the objects for which county funds could be appropriated, are at times subject to repeal or alteration, so as to appropriate the funds in a manner, or to objects, different from those before provided. 2. Such act does not violate the principles of taxation laid down in the constitution. (*Hamilton and Treat* vs. *St. Louis County*, 15 Mo. 3, affirmed.) 3. A county is not a private corporation, but an agency of the State government; and while the Legislature cannot take from the county its property, it has full power to direct the mode in which property shall be used for the benefit of the county: *Id.*

Conveyance—Description—Execution—Sheriff's Deed.—The sheriff sold and conveyed under execution a tract of land, describing it as a tract of land situate about six miles northwestwardly from the city of St. Louis, on the River des Peres, containing fifteen hundred arpens, more or less, being part of a tract of eighteen hundred arpens granted to James McDonald, February 6, 1798, &c,, and adjoining land granted to Mary L. Papin. *Held*, that the deed was void for uncertainty of description, but had the land been conveyed by the defendant in the execution, by the same description, the deed might have passed either all the interest of the grantor in the tract, or fifteen hundred parts in eighteen hundred. *Held*, further, that the evidence did not give certainty to the description in the sheriff's deed: *Clemens* vs. *Rannels.*

SUPREME COURT OF NEW YORK.[1]

Husband and Wife—Wife's Earnings.—An agreement made previous to 1860, between a married woman, with the knowledge and consent of her husband, and a third person, for personal services to be rendered by her to the latter, who agrees that she shall be paid what her services are reasonably worth, gives to the wife no title to her earnings in her own right. In law they belong absolutely to the husband, and the promise to pay her is, in law, a promise to pay the husband: *Woodbeck* vs. *Hewens.*

The common law still controls the relation and rights of husband and wife, except where those rights have been modified or changed by statute: *Id.*

There was no statute in New York giving a married woman the right to perform labor or services on her sole and separate account, until that of March 20, 1860. And that statute does not operate to divest a husband of his right to the wife's earnings for services previously rendered: *Id.*

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[1] From the Hon. O. L. Barbour; to appear in Vol. 42d of his Reports.

A wife cannot maintain an action to recover pay for her services, as trustee of an express trust; there being, in respect to such claim, no such relation between husband and wife as trustee and *cestui que trust: Id.*

Sale of Chattels—What is a sufficient Delivery.—M. being indebted to D., turned out to him a quantity of marble, not then in the actual custody of M., but in the custody of third persons, with the understanding that D. should sell it and apply the avails on M.'s debt. M. delivered to D. a schedule of the pieces of marble, and D. arranged with the persons having the property in charge to keep and take care of it for him. *Held*, that this was an absolute and unconditional sale; and that, under the circumstances, there was a sufficient *delivery* to take the case out of the statute: *Dixon* vs. *Buck, Sheriff, &c.*

Statute of Limitations in a Surrogate's Court.—The Statute of Limitations may be interposed in a Surrogate's Court as well as in any other. And in a case where courts of law have a concurrent jurisdiction with the surrogate and a court of equity, the six years' limitation will constitute a bar to the proceedings in the Surrogate's Court: *Smith, Ex'r., &c.*, vs. *Remington.*

Where a legacy was due and payable, by the terms of the will, when the legatee became 21, which was in November, 1854, and the proceedings before the surrogate to compel an account, and payment of the legacy by that executor, were not instituted until the 4th of June, 1862, about one year and six months after the six years from the time the legacy fell due had expired. *Held*, that the Statute of Limitations was a bar: *Id.*

Right of a Town to Sue.—A town has no right to money improperly collected by tax from its tax-payers, and cannot maintain an action in the name of its supervisor to recover it back: *Gailor* vs. *Herrick.*

What Creditors may set aside an Assignment—Receivers, Suits by—Assignments for benefit of Creditors—Assignees, Allowances to.—A simple contract-creditor cannot maintain an action to set aside an assignment made for the benefit of creditors: *Coope, Receiver,* vs. *Bowles et al.*

A receiver must state in his complaint the equity of the parties whose rights, under the order of the court appointing him, he represents, to maintain the action which he attempts to prosecute: *Id.*

A receiver in general is not clothed with any right to maintain an action which the parties or the estate which he represents could not maintain. He must show a cause of action existing in those parties, and that by the appointment of the court, lawfully made in a matter where the court had jurisdiction, the power has been conferred on him in his representative capacity as receiver to prosecute the action: *Id.*

To authorize a receiver appointed in supplementary proceedings to prosecute an action to set aside an assignment made by the debtor, the judgment and other facts necessary to maintain the proceedings must be set forth. It is not enough to allege in the complaint that the plaintiff was appointed receiver in supplementary proceedings: *Id.*

An assignment in trust for creditors, executed here by two of the four members of a firm, the other two members being absent from the coun-

try, cannot be supported unless due authority for its execution on their behalf by the absent members or a subsequent ratification of such execution is proven: *Id.*

Whatever moneys of the estate were paid for expenses or to creditors, under an assignment in good faith, before the commencement of an action to set it aside, should be allowed to the assignee, if the assignment is finally held invalid. But payments to himself or to his own firm, do not come within this principle: *Id.*

Transfers with intent to Defraud Creditors—Vendee's knowledge of Vendor's fraud—Partnership; transfer of Property by, to Pay individual Debts—Judge's charge.—A transfer of goods by one who is indebted or insolvent, or whether indebted or insolvent or not, with the design and intent to defraud some creditor of his and deprive him of the ability to collect his debt, may be made under such circumstances that if the goods be followed the law will regard it as an actual fraud between him and his vendee: *Walsh* vs. *Kelly, Sheriff.*

The vendee's knowledge of facts and circumstances tending to prove a fraudulent motive on the part of the vendor need not be sought for or inferred from obscure or doubtful indications, where there was an express agreement between them. And a request to submit an inquiry to the jury as to fraud arising out of facts and circumstances only, is, in such a case, immaterial; and if the judge refuses to submit the question, an exception to his refusal is not well taken. If such a motive existed, it will implicate the purchaser as well as the vendor: *Id.*

There is no ground for charging the purchaser with notice of a fraudulent intent on the part of the vendor, from facts and circumstances merely, when it is plain that if there was any such intent the purchaser was act and part in it: *Id.*

A firm composed of three members has no right to apply the partnership property to the payment of the debts of two of its members. If it is so transferred it is subject to seizure under attachments issued at the suit of creditors of the firm: *Id.*

The knowledge that a firm is in failing circumstances will not, *per se*, render it unlawful for a creditor to receive a transfer of goods from the failing firm in satisfaction of a demand: *Id.*

It is proper for a judge to charge a proposition based on facts which are questions in the cause for the jury to determine: *Id.*

Husband and Wife—Wife's separate Estate, when chargeable.—Where a married woman, having a separate estate, and transacting business on her own account by her husband as her agent, employs attorneys to commence suits upon accounts growing out of the wife's business, the separate estate of the wife is liable for such services rendered by the attorneys as are found to have been for the benefit of the wife and her separate estate: *Owen et al.* vs. *Cawley.*

If the suits and proceedings were instituted for the purpose of benefiting the wife's separate estate, the fact that they, or some of them, were unsuccessful, is not of controlling importance on the question of the liability of her separate estate: *Id.*

Eminent Domain—Power to take the franchises of a Corporation

for Public use—Railroads.—The state legislature, under the power of eminent domain, can take the franchises of a corporation for public use, upon making due compensation: *In the matter of the Petition of Kerr and others.*

Railroads constructed and operated under the authority of the state legislature, by corporations or joint stock companies, are to be deemed constructed and operated for public use or benefit; and the legislature may delegate to such corporations or joint stock companies the right or power of eminent domain: *Id.*

The same rules apply where the right is given to individuals and their assigns: *Id.*

Parties—Trustee—Indorsement of a Corporation—Right of Corporation to Pledge its Assets.—Where a mutual insurance company being in need of funds to pay losses, procured a loan from different persons and firms, and transferred to the plaintiff premium notes made by various individuals, to be held by him as collateral security for the repayment of the loan; *Held*, that the plaintiff held the notes as trustee of an express trust, and that an action on two of them was properly brought in his name: *Clark* vs. *Titcomb.*

It being the usual custom of a corporation to transfer its notes by the mere indorsement of the president, such an indorsement is all that is requisite to effect a transfer of the title, when the transfer itself is authorized by a resolution of the directors: *Id.*

A corporation having the power to borrow money for its ordinary business and to accomplish its objects, and to issue its own obligations for money so borrowed, has also the right, instead of giving its own obligations, to turn out its assets to secure the payment of the loan. The two powers stand on the same principles: *Id.*

Marine Insurance—Valued Policy.—The defendant insured the plaintiff in the sum of $6000 on one-fifth of the freight of a ship lost or not lost, for one year from September 10, 1859, the whole freight valued at $30,000, for a premium of 7½ per cent. According to the last advices received by the plaintiff prior to the insurance, the ship was on the 10th of September, 1859, at San Francisco, ready for sea, and about to sail for Hong Kong, having a small amount of freight and a considerable number of passengers. These facts were communicated to the insurers previous to the insurance. The vessel sailed on the 10th of September with freight only to the amount of $1,176.75, and with passengers. When five days out she was totally destroyed by fire. The premium usually charged in 1859, on a single voyage from San Francisco to Hong Kong, in a ship of a similar kind and size, was from one and a half to two per cent. *Held*, that the defendants were concluded by the valuation stated in the policy and that the platntiff was entitled to recover one-fifth of that sum, viz., $6000: *Delano* vs. *The American Ins. Co. of Boston.*

Held, also, that the assured need not prove the value of the freight; the valuation being a mere substitute, as between the parties, for the computation of the value in an open policy; provided it was neither intended as a cover for a wager, by both parties, nor fraudulently made by the insured.

Held, further, that the case was the same as though the subject of insurance was actually proved to have been worth the sum at which it was valued: *Id.*

And that the defendants could not claim an allowance in the nature of salvage for the prepaid passage money: *Id.*

Innkeepers—Their Liability as Insurers.—The liability of an innkeeper is of the same stringent character as is that of a common carrier; that is to say, both are deemed to be *insurers* of the property delivered to them, with a consequent liability for loss and damage happening to it while in their possession: except when such loss or damage is occasioned by the act of God, or the public enemy, or through the fault of the owner: *Hulett* vs. *Swift, Executor.*

Accordingly *held*, that an innkeeper was liable for property of a guest, destroyed by *fire*, while in the barn attached to the inn: *Id.*

Contribution—Subrogation.—The plaintiff and defendant and four other persons were the only stockholders and the trustees of a manufacturing corporation. The corporation being indebted to C. for money borrowed, he required, as a condition of a continuance of the loan, the individual note of all or some of the stockholders. Thereupon five of the stockholders and trustees, including the plaintiff and defendant, executed their joint and several promissory note to him for the amount of his claim. G., one of the stockholders who did not sign the note, and the corporation, became insolvent, and the plaintiff paid the note and took it up. *Held*, 1. That as between the makers of the note and the payee, the former were jointly and severally liable to pay the whole amount. That as between them and the corporation, they were all accommodation makers; and the corporation was liable to each of them for all sums which they should have to pay. And that, as between themselves, each was liable to pay one-fifth part of the whole amount. 2. That these rules were not to be changed or misapplied either because the makers of the note had unequal interests in the corporation, or because the company, or G. became insolvent. 3. That there was, strictly speaking, no subrogation of the plaintiff to all the rights of the payee; but his payment of the note authorized him to sue any of the other makers for contribution. And that the defendant was liable to pay his one-fifth part of the amount so paid by the plaintiff; which was recoverable in an action at law: *Coburn* vs. *Wheelock.*

Former suit, when a bar.—A suit brought for one portion of a demand, or for one of several demands arising out of the same contract or transaction, is a bar to a subsequent suit for the residue of such demand or demands, if they were all due when the suit was commenced; and this though only a portion of the demands were litigated in the former suit, or a part were withdrawn: *Hopf et al.* vs. *Myers.*

So, if a plaintiff having a claim arriving out of the contract or transaction sued on, which accrued prior to the commencement of the suit, omits to make such claim, and the same is not in issue in the suit, and no evidence is given in support of it, he will be barred from presenting such claim as a *set off*, in a subsequent action brought against him upon the judgment recovered in the prior suit: *Id.*